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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,746	02/10/2004	Christie M. Cox	P2702US	1553
8968 7590 02/08/2008 DRINKER BIDDLE & REATH LLP ATTN: PATENT DOCKET DEPT. 191 N. WACKER DRIVE, SUITE 3700 CHICAGO, IL 60606				
EXAMINER				
MILLER, WILLIAM L				
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3677				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/775,746

**Applicant(s)**

COX ET AL.

**Examiner**

William L. Miller

**Art Unit**

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2007.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3, 4 and 6-25 is/are pending in the application.  
4a) Of the above claim(s) 7-15 and 19 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1, 3, 4, 6, 16-18 and 20-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(c), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(c) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's amendment filed on 06-29-2007 has been entered. Claims 1, 3, 4, and 6-25 are pending.

### ***Election/Restrictions***

Claims 7-15 and 19 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. The election of Group I, Figs. 1A-2, (carapace for burial vault) and Invention I (article claims) was made **without** traverse on 09-14-2005 as documented in paragraph 6 of the Office action dated 09-16-2005.

New claim 19 has been withdrawn as it reads on the non-elected species Group II, Figs. 3-5 (urn).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the container, namely the burial vault, (claims 18-19) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

Claims 16-18 and 20-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 16-18 are inaccurate as the substrate is not attached to the container (burial vault), but rather to the carapace (see page 5 of specification). A "carapace" for a burial vault is known in the art as a structure which mates with the upper surface of the lid of a burial vault.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 6, 16-18, and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pazar (US#2003/0167706) in view of Takemoto et al. (US#4219596).

Regarding claim 1, Pazar discloses a decorative carapace for a burial vault comprising: a carapace 2910 (Fig. 28) having a top surface; and a metal substrate (nameplate) 2310 having a decorative graphic (name and date) and being attached/adhered to the top surface via screws.

Regarding claims 1, 3, 4, and 6, Pazar fails to disclose the substrate as being a transparent substrate having a decorative graphic printed thereon wherein the substrate is attached to the carapace via an adhesive (transparent). Takemoto discloses a decorative assembly comprising a transparent substrate 16 having a decorative graphic 18 printed thereon wherein the substrate is attached to a structure via a transparent adhesive (col. 3, lines 59-60) such that the graphic appears to be part of the structure as opposed to appearing "stuck on" (col. 3, lines 57-62). Therefore, as taught by Takemoto, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pazar by replacing the metal substrate with a transparent substrate having a decorative graphic printed thereon wherein the substrate was attached to the carapace via a transparent adhesive to enhance the appearance of the vault. Further regarding claim 1, Takemoto teaches the substrate can include acrylated polyester resins (col. 4, line 49).

Regarding claims 16 and 18, Pazar discloses a decorative receptacle for holding the remains of a deceased, the receptacle comprising: a container being collectively viewed as the burial vault and its carapace 2910 (Fig. 28); and a metal substrate (nameplate) 2310 having first (upper) and second (lower) sides; the substrate having a graphic image (name and date) on its first side and being attached/adhered at its second side to a first surface (upper surface of carapace) of the container via screws.

Regarding claims 16, 20, and 22, Pazar fails to disclose the substrate as being a transparent substrate having a graphic image printed thereon wherein the substrate is attached to the first surface (upper surface of the carapace) of the container via an adhesive (transparent). Takemoto discloses a decorative assembly comprising a transparent substrate 16 having a graphic image 18 printed thereon wherein the substrate is attached to a structure via a transparent adhesive (col. 3, lines 59-60) such that the graphic appears to be part of the structure as opposed to appearing “stuck on” (col. 3, lines 57-62). Therefore, as taught by Takemoto, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Pazar by replacing the metal substrate with a transparent substrate having a graphic image printed thereon wherein the substrate was attached to the first surface (upper surface of the carapace) of the container via a transparent adhesive to enhance the appearance of the vault.

Regarding claim 17, although Pazar as modified by Takemoto fails to specifically disclose the substrate being sized to substantially cover the first surface (upper surface of the carapace) of the container, it would have been an obvious design consideration to further modify the substrate such that it was sized to substantially cover the first surface (upper surface of the

carapace) of the container as a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

Regarding claim 21, the graphic image 18 taught by Takemoto is colored as it is composed of conventional inks (col. 5, lines 29-30).

Regarding claims 23 and 24, the substrate 16 taught by Takemoto is “substantially rigid” as it is a solid, cured, polymeric material (col. 4, lines 1-10), and this solid, cured, polymeric material is a continuous sheet of material without seams.

Regarding claim 25, Takemoto teaches an overcoating over the indicia (graphic image) 18 which provides a protective layer covering the graphic image.

#### ***Response to Arguments***

Regarding claims 1 and 16, the applicant argues the following:

“Applicant respectfully submits that there is no teaching or suggestion in Pazar to combine Pazar with Takemoto as indicated in the Office Action, and therefore, one of ordinary skill in the art would not have been motivated to combine the teachings of Pazar with Takemoto. Pazar teaches providing “a more permanent record than the nameplate 2310” that is not exposed to the elements. There is no discussion or suggestion in Pazar of avoiding a “stuck on” appearance of the nameplate or of improving the appearance of the nameplate on a surface. Therefore, applicant respectfully requests withdrawal of the rejections of claim 1 and its associated dependent claims.”

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5

USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner acknowledges there is no explicit discussion in Pazar of avoiding a "stuck on" appearance of the nameplate or of improving the appearance of the nameplate on a surface, however such an explicit discussion is not required for a proper combination of Pazar and Takemoto. Pazar and Takemoto both disclose a label (substrate) including indicia thereon. The transparent substrate of Takemoto is a more visual appealing arrangement than that of the metal substrate of Pazar as previously discussed in detail, and per knowledge generally available to one of the ordinary skill in the art, it would have been obvious to combine these references to create an aesthetically improved burial vault.

The affidavit of Marty Cox filed under 37 CFR 1.132 on 06-29-2007 is insufficient to overcome the rejection of claims 1, 3, 4, 6, 16-18, and 20-25 based upon the 35 U.S.C. 103 rejection of Pazar in view of Takemoto as set forth in the current Office action because:

1) It refer(s) only to the system described in the above referenced application and not to the individual claims of the application. Thus, there is no showing that the objective evidence of nonobviousness is commensurate in scope with the claims. See MPEP § 716; and

2) The provided sales figures are not adequately defined. Gross sales figures do not show commercial success absent evidence as to market share, *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed.Cir. 1985), or as to the time period during which the product was sold, or as to what sales would normally be expected in the market, *Ex parte Standish*, 10 USPQ2d 1454 (Bd. Pat. App. & Inter. 1988).



In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William L. Miller whose telephone number is (571) 272-7068. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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